

Residential Tenancies Tribunal

[REDACTED] Decision 19-0233-05

Denise O'Brien
Adjudicator

Introduction

1. The hearing was called at 2:05 p.m. on April 18, 2019 at Residential Tenancies, Motor Registration Building, 149 Smallwood Drive, Mount Pearl, NL.
2. The landlord, [REDACTED], hereafter referred to as the landlord, participated in the hearing.
3. The tenants, [REDACTED] and [REDACTED], hereafter referred to as tenant1 and tenant2, respectively, participated in the hearing.

Issues before the Tribunal

4. The landlord is seeking the following:
 - a. Payment of rent in the amount of \$1175.00;
 - b. Late fees in the amount of \$29.00;
 - c. Payment of utilities in the amount of \$249.90;
 - d. Hearing expenses.

Legislation and Policy

5. The jurisdiction of the Director of Residential Tenancies is outlined in the Residential Tenancies Act, 2018 (the Act), Section 47.
6. Also relevant and considered in this case are Sections 10, 14, 15, 18, and 19 of the Act and Policy 12-1: *Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Issue 1: Payment of rent - \$1175.00

7. In determining an application for the payment of rent, the landlord is required to establish the rental rate and the payment record.

Landlord Position

8. The landlord testified that the tenants signed a lease agreement on February 8, 2019 for a one year term to start on March 1, 2019 with rent set at \$1175.00 per month due on the 1st of each month. He is seeking rent in the amount of \$1175.00 for the month of March 2019. He testified that on February 20, 2019 he was speaking with tenant1 and she told him that they may not be moving into the unit. On February 21, 2019, he received a text message from tenant1 stating that they would not be moving into the unit. He confirmed with tenant2 on February 22, 2019 that they were not moving into the unit.
9. The landlord testified that on February 21, 2019, he contacted a couple who viewed the unit around the same time the tenants viewed the unit to see if they were interested in renting the unit. At the time of viewing the couple told him they would be interested in the unit if the tenants didn't take the unit. The next day, February 22, 2019 the couple agreed to rent the unit for April 1, 2019.

Tenant Position

10. The tenants acknowledge they signed a term agreement to move into the unit on March 1, 2019 and they notified the landlord on/or about February 21, 2019 they were not going to move into the unit.

Analysis

11. I have reviewed the testimony and evidence of the landlord and the tenants and I find there is one issue that needs to be addressed; (i) is the landlord entitled to rent for the month of March 2019. I also find the tenants signed a lease agreement for a one year term to start on March 1, 2019. On February 21, 2019 the tenants notified the landlord that they were not moving into the unit. The tenants did not terminate the tenancy as required under section 18.(1)(c). Further the landlord tried to mitigate his losses as per section 10.(1)4. He had the unit re-rented on February 22, 2019 for the new tenants to move in on April 1, 2019.

Decision

12. The landlord's claim for rent succeeds in the amount of \$1175.00 for the month of March 2019.

Issue 2: Late fees - \$29.00

Landlord Position

13. The landlord testified he is seeking payment of late fees in the amount of \$29.00 as he had not received the rent for the month of March 2019. He said he is not sure how he came up with the amount of \$29.00.

Analysis

14. The rental arrears has been established in paragraph 12 above. The *Residential Tenancies Regulations, 2018* allows for a late fee of \$5.00 for the 1st day and \$2.00 for every day thereafter to a maximum of \$75.00 per late period. As the rent has been in arrears since March 2019 the landlord is entitled to late fees in the amount of \$29.00.

Decision

15. The landlord's claim for late fees succeeds in the amount of \$29.00.

Issue 3: Payment of utilities - \$249.90

Landlord Position

16. The landlord testified that the tenants were responsible for the utilities. He had to put \$249.90 worth of oil in the tank on March 12, 2019 as the tenants did not move into the unit on March 1, 2019 as per their lease agreement. He said he had to keep the furnace running. The landlord presented a copy of the invoice from Harvey's Oil dated March 12, 2019 (LL #2).

Tenant Position

17. Tenant1 testified that they agreed to pay the utilities. She said they wouldn't have used that much oil.

Analysis

18. I have reviewed the testimony and the evidence of the landlord and tenant1 and I find the tenants were responsible for the utilities. I also find the landlord had to put oil in the tank on March 12, 2019. The amount the landlord is claiming is reasonable as March is a winter month.

Decision

19. The landlord's claim for payment of utilities succeeds in the amount of \$249.90.

Issue 4: Application for Security Deposit

20. Under the authority of Section 47.(j) the director may authorize a landlord to offset money a tenant owes to the landlord against money the landlord owes to the tenant. Further under subsection (m), the director has the authority to determine the disposition of the security deposit.

Landlord Position

21. The landlord testified a \$650.00 security deposit was paid in February 2019.

Tenant Position

22. Tenant1 testified that she paid the \$650.00 security deposit. Tenant2 acknowledges that tenant1 paid the security deposit.

Analysis

23. A security deposit was paid in February 2019. As the landlord has been successful in his claim for the payment of rent, late fees and payment of utilities, he shall retain the \$650.00 security deposit as outlined in this decision and order. Further, as the tenancy was a joint tenancy, the tenants are equally and jointly responsible.

Decision

24. The landlords shall retain the security deposit as outlined in this decision and attached order.

Issue 5: Hearing Expenses - \$20.00

25. Under the authority of Section 47.(q) the director may require the unsuccessful party to pay costs to the successful party to an application. Costs eligible to be awarded are identified in *Policy 12-1: Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*.

Landlord Position

26. The landlord paid an application filing fee in the amount of \$20.00. The landlord is seeking this cost.

Analysis

27. The cost the landlord incurred to make the application is considered a reasonable expense as per *Policy 12-1 Recovery of Fees: Filing, Costs and Hearing Expense, Interest, Late Payment and NSF*. Therefore, I find the tenants are responsible to cover the cost of the hearing expenses in the amount of \$20.00.

Decision

28. The tenants shall pay the landlord's hearing costs in the amount of \$20.00.

Summary of Decision

29. The landlord is entitled to the following:

a) Payment of rent	\$1175.00
b) Late fees	\$29.00
c) Payment of utilities.....	\$249.90
d) Hearing expenses	<u>\$20.00</u>
e) LESS: Security deposit	<u>(\$650.00)</u>
f) Amount owing to the landlord	\$823.90

July 12, 2019

Date

Residential Tenancies Section